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International Covenant on Civil and Political Rights

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Human Rights Committee

List of issues prior to submission of the seventh periodic report of Germany*, **

A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please provide information on processes in place to implement the recommendations contained in the Committee's previous concluding observations (CCPR/C/DEU/CO/6). Please indicate which procedures are in place for the implementation of the Committee's Views under the Optional Protocol and whether there exists sufficient awareness of its existence among those who allege that their human rights under the Covenant have been violated.

2. Please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the previous concluding observations, including examples of cases in which the provisions of the Covenant have been referred to by national courts.

B. Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the previous recommendations of the Committee

Constitutional and legal framework within which the Covenant is implemented (art. 2)

3. With reference to the previous concluding observations (para. 5), please report on any progress in withdrawing the reservation to article 15 (1) of the Covenant and indicate whether consideration has been given to withdrawing the State party's other reservations, in particular that to article 5 (2) (a) of the Optional Protocol to the Covenant.

4. In the light of the previous concluding observations (para. 16), please report on the implementation of the National Action Plan on Business and Human Rights adopted in 2016 and of the law implementing the 2014 European Union directive on non-financial reporting, and on their impact, particularly in ensuring that all business enterprises domiciled in the territory of the State party and/or subject to its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations and that victims of human rights abuses by or involving German companies, including those operating abroad, have access to effective remedies. Please respond to the concerns about

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's previous concluding observations (CCPR/C/DEU/CO/6).

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the difficulties in access to justice for victims, especially larger groups of affected persons or foreign plaintiffs, owing, inter alia, to restrictive procedural and private international law rules. Please provide information on any comprehensive assessment of the human rights impact of arms exports, especially with a view to ensuring that they are not to be used to commit arbitrary or unlawful deprivations of life or facilitate such violations.

Non-discrimination and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20 and 26)

5. Please clarify whether the General Equal Treatment Act explicitly and adequately protects individuals against discrimination on the grounds of language and nationality, effectively addresses the problem of discrimination on multiple grounds and fully covers discrimination by public entities. With reference to the previous concluding observations (para. 7), please report on the steps taken to amend section 19 (3) of the General Equal Treatment Act to ensure that its interpretation and application in practice does not justify discrimination based on any grounds in the housing market and to extend the two-month time limit set out in sections 15 (4) and 21 (5) of the Act for submitting complaints.

6. Please report on the measures taken to address barriers to affordable and effective access to justice and remedies for victims of discrimination, indicating, inter alia, whether: (a) the mandate of the Federal Anti-Discrimination Agency has been extended to include the power to investigate complaints of discrimination and bring proceedings before the courts, as recommended in the previous concluding observations (para. 6); and (b) consideration has been given to introducing the right of groups to file discrimination cases before courts.

7. In connection with the previous concluding observations (paras. 17–18), please report on the steps taken to respond to the reports of hate speech, including in the media, on the Internet and in politics, racist and xenophobic acts, including racially motivated crimes, against people of African descent, Sinti and Roma, Muslims, asylum seekers, refugees and immigrants, as well as manifestations of anti-Semitism, including physical attacks and desecration of cemeteries.

8. Please indicate whether measures have been taken to: (a) revise the current classification of hate crimes as politically motivated crimes; (b) address the restrictive definition of hate crimes for data-collection purposes; (c) consider revising section 130 of the Criminal Code, which stipulates that acts of incitement to hatred must be liable to disturb public order. Please outline the measures taken to ensure effective investigation of and prosecution for hate crimes, and provide information on the number of reported cases, investigations and prosecutions initiated, and their outcome.

9. Please respond to allegations that the broad scope of section 22 (1) of the Federal Police Act authorizing the police, for immigration-control purposes, to stop, question, demand identity documents from and inspect objects in the possession of any person in a railway station, airport or on a train leads to racial profiling by law enforcement officials. Please report on the measures taken to address such practices effectively and clarify whether there are any plans to introduce a reasonable suspicion standard in the exercise of police powers pursuant to section 22 (1) of the Federal Police Act.

Counter-terrorism and security measures (arts. 9, 12, 14 and 17)

10. Please explain the compatibility with the Covenant of the measures restricting rights pursuant to national security laws, or revisions to such laws, that have been adopted at federal level and in some Länder in 2017 and 2018, including administrative control measures against individuals considered to pose a threat to national security (*Gefährder*), such as electronic ankle tagging, assigned residency, bans on certain communications and telecommunication surveillance; extension of time limits for police custody and expansion of post-sentence preventive detention also to "extremist criminals"; increasing the administrative detention without charge for "potential attackers" from 14 days to up to 3 months in Bavaria; and lowering of the threshold for the detention of individuals representing a "significant security threat", pending their deportation (section 62 of the Residence Act). In particular, please address: (a) the necessity and proportionality of such

measures and respect for the principle of legal certainty; and (b) appropriate safeguards against arbitrariness and abuse.

Violence against women, including sexual and domestic violence (arts. 2, 3, 6, 7 and 26)

11. In connection with the previous concluding observations (para. 9) and the recent concluding observations of the Committee on the Elimination of Discrimination against Women (see CEDAW/C/DEU/CO/7-8, paras. 25–26), please report on the progress made in combating violence against women, including domestic violence, in particular with regard to prevention initiatives, underreporting of such violence and the low prosecution and conviction rates (please include the relevant statistics), and availability of adequate funding for and access to shelters and other support services for all victims, regardless of their immigration status.

Voluntary termination of pregnancy (arts. 3, 6, 7, 17 and 26)

12. Please report on measures taken to: (a) provide safe, legal and effective access to abortion; and (b) ensure equal access to affordable contraceptive methods, including for women living in poverty, in all Länder. Please report on the status of proposed amendments to section 219a of the Criminal Code prohibiting information about and advertising on abortion. Please also respond to the reports of street harassment by anti-abortion activists of pregnant women seeking counselling, and report on the measures to ensure their effective protection against such acts.

Children with variations of sex characteristics (intersex) (arts. 7, 9, 17, 24 and 26)

13. Please respond to reports of non-emergency, invasive and irreversible surgical or other medical treatment carried out on infants and children with variations of sex characteristics (intersex), including sterilizing, feminizing, and masculinizing procedures, without fully informed, prior and free consent. Please clarify: (a) whether there are plans to ban such procedures unless they are an absolute medical necessity or are consented to by sufficiently mature intersex individuals themselves; and (b) whether any binding guidelines for medical professionals on the treatment of individuals with variations of sex characteristics have been adopted. Please report on the measures taken to address obstacles in access to justice and redress for individuals who were subjected to such surgical or other interventions as children, including statutes of limitations for filing claims.

Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, liberty and security of person, and treatment of persons deprived of their liberty (arts. 6, 7, 9, 10 and 24)

14. Please provide information on the efforts to ensure that support, including use of the Ramstein airbase and real-time data transfers on German territory, does not contribute to the arbitrary deprivation of life within the context of strikes by unmanned aerial vehicles (drones) outside of recognized combat zones.

15. Please report on the outcome of investigations against 109 police officers for alleged unlawful use of force during protests against the Group of 20 Summit in Hamburg in July 2017. In reference to the previous concluding observations (para. 10), please: (a) comment on the high number of dismissed complaints of ill-treatment by police and on the very low number of charges for such conduct (3 per cent in 2016) and provide relevant updated statistics; (b) report on the measures taken to ensure prompt, thorough and impartial investigations into all allegations of ill-treatment and to establish fully independent complaints mechanisms at the federal level and in all Länder to investigate such allegations; and (c) clarify whether mandatory personal identification for police officers is a requirement for the federal police and the police in all Länder. Please also report on the measures taken to ensure that the National Agency for the Prevention of Torture is provided with adequate financial and staff resources to enable it to carry out its mandate effectively.

16. Please respond to the concerns of frequent use of mechanical restraint in the context of police custody, and indicate whether consideration has been given by all Länder to

abolish such a practice. Please report on the measures taken to prevent any misuse or abuse of physical and chemical restraints in respect of persons with psychosocial disabilities and older persons in care institutions. With reference to the previous concluding observations (para. 15) and the Committee's evaluation of the third follow-up reply of the State party (see CCPR/C/117/2), please provide information regarding investigations and appropriate sanctions for those responsible for the violations of legal provisions related to the use of physical restraint measures in residential homes, and clarification as to whether audits regarding the use of restraints are conducted routinely.

17. Please respond to the following allegations and report on the measures taken to address them effectively: (a) violations of older persons' rights in care institutions, including neglect, physical, psychological and sexual abuse, deprivation or restriction of liberty, and the lack of independent complaints mechanisms to investigate abuse in care institutions; (b) physical and verbal abuse, as well as sexual harassment and exploitation of some vulnerable patients in forensic psychiatric clinics, notably at Brandenburg Forensic Psychiatric Clinic; (c) involuntary treatment for persons with psychosocial disabilities; and (d) forced sterilization and coercive abortions performed on adults with disabilities. Please also indicate whether there are plans to amend the legislation of some Länder providing for disciplinary sanctions against patients in psychiatric institutions.

18. Please indicate: (a) whether steps have been taken to clarify the wording of sections 114b (2) and 114c (1) of the Code of Criminal Procedure regarding the right of notification of custody and specify the criteria authorizing delaying such a right; (b) the authority taking decisions to delay notification in the interests of an ongoing investigation and the safeguards in place against misuse of such authority.

19. Please clarify whether the right to have defence counsel present during police questioning is clearly set out in law. Please report on the status and outcome of the review initiated in the light of European Union Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, and clarify whether legal representation of juveniles at any stage of the proceedings, including during interrogations, is mandatory in all cases.

20. Please report on the measures taken to review the statutory provisions on solitary confinement in various Länder permitting such confinement for up to four weeks for adult prisoners, and clarify whether solitary confinement in respect of juveniles has been abolished.

21. In connection with the previous concluding observations (para. 14), please report on changes introduced in the system of preventive detention since 2013 and explain their impact on the compatibility of the system with the Covenant. Please provide information on the number of individuals detained under the system every year, the grounds for their detention and the duration thereof.

22. Please comment on the reports that approximately 8,000 unaccompanied children asylum seekers, refugees and migrants were unaccounted for in 2017, and outline the efforts to establish their whereabouts and to prevent such future occurrences. Please also provide information on the registration of children born in Germany to parents without proof of identification, including asylum seekers, refugees and migrants.

Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 10, 13 and 17)

23. Please respond to concerns about shortcomings in the quality of asylum procedures attributable mainly to the lack of training of new personnel and the pressure to quickly produce a high number of decisions. Please report on the measures taken to facilitate the process of family reunification for beneficiaries of subsidiary protection and clarify whether consideration has been given to introducing a broader scope of the understanding of "family" for the purpose of family reunification.

24. Please respond to the allegations of ill-treatment of asylum seekers at reception facilities and explain whether and how such allegations have been investigated. Please also address the concerns that the policy of requiring the so-called "tolerated migrants" to remain in designated places of accommodation increases their exposure to violent attacks,

and that temporary residence is afforded to foreign victims of human trafficking only if they cooperate with the police. Please report on the measures to ensure that the principle of non-refoulement is respected with regard to new immigration legislation and policies.

Right to privacy (art. 17)

25. Please report on the safeguards against unnecessary and disproportionate interference with privacy and online security in the context of surveillance pursuant to the Act for Foreign-Foreign Signals Intelligence Gathering of the Federal Intelligence Service adopted in 2016, as well as the hacking into encrypted messaging services during criminal investigations. In particular, please respond to the concerns that the Act authorizes bulk and targeted surveillance of extraterritorial (foreign-to-foreign) communications on broad and insufficiently defined objectives, without prior judicial authorization and effective independent oversight and report on its compatibility with the Covenant and the principles of legality, proportionality and necessity. Please clarify the status of the legal provisions on indiscriminate data retention that were found not to be compliant with European Union law by a higher administrative court in June 2017, and provide information about any data retention regulations in force.

Freedom of religion (art. 2, 18, 26)

26. Please provide information on the compatibility with the Covenant of the ban on the wearing of headscarves by schoolteachers in a number of Länder, as well as on the ban on wearing of headscarves by civil servants in Berlin and the State of Hesse.

Freedom of expression (art. 19)

27. Please report on any assessment of the impact on freedom of expression of the 2017 Network Enforcement Act, which obliges providers of social media platforms to remove "illegal content" within 24 hours under threat of heavy monetary fines, and respond to concerns that the law provides no guidelines on determining illegal content and places a heavy burden on social media providers to make a difficult determination as to the legality of speech; provides no meaningful judicial oversight over decisions regarding content removal nor a judicial remedy for violations of the right to impart or access information; encourages content censorship; and could lead to a restriction on legally justified online speech. Please provide information on the penalties that have been imposed under the law and any specific information that has been regarded as hate speech.

28. Please clarify whether there are any plans to decriminalize defamation. Please provide information about the new statutory offence of "data fencing" (section 202 d of the Criminal Code), which penalizes the handling of leaked data, including clarification on the protection afforded to the media, any charges that have been brought under the law, and safeguards against disproportionate restrictions on the right to receive information of legitimate public value.

Freedom of association (art. 22)

29. Please explain the compatibility with the Covenant of the ban on striking for public sector workers, including for teachers employed as civil servants as endorsed by the Constitutional Court in June 2018, with the State party's obligations under article 22.

Right to participate in public life (arts. 25 and 26)

30. Please indicate which measures have been taken to review existing laws and regulations both at federal (section 13 (2) and (3) of the Federal Electoral Act) and Land level depriving persons with disabilities and persons with diminished criminal responsibility of their right to vote, and to facilitate the exercising of electoral rights by all without discrimination.